



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT  
332 MINNESOTA STREET, SUITE E1500  
ST. PAUL, MN 55101-1323

MVP-2023-00919-SRK (Benton Substation)

7 June 2024

**MEMORANDUM FOR RECORD**

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),<sup>1</sup> MVP-2023-00919-SRK Benton Substation

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>2</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>3</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK Benton Substation

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
  - i. Wetland B-1, non-jurisdictional
  - ii. Wetland B-2, non-jurisdictional
  - iii. Wetland B-4, non-jurisdictional
  - iv. Wetland B-5, non-jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area for this determination includes the 4 non-jurisdictional wetlands identified in Section 1(a) of this MFR and on the attached figure labeled 2023-00919-SRK Benton AJD. The review area is located at 45.5706 N, -94.0396 W in Minden Township, Benton County, Minnesota. There are no other JDs associated with the Benton Substation review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK Benton Substation

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
  - b. The Territorial Seas (a)(1)(ii): N/A
  - c. Interstate Waters (a)(1)(iii): N/A
  - d. Impoundments (a)(2): N/A
  - e. Tributaries (a)(3): N/A
  - f. Adjacent Wetlands (a)(4): N/A
  - g. Additional Waters (a)(5): N/A

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<sup>5</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>6</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK Benton Substation

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>7</sup> N/A
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).
  - Wetland B-1 (0.22 acre) is located within the 1020' elevation with the surrounding elevation ranging 2 – 26 feet higher around this wetland based on the MNDNR 2-foot contour maps. The LiDAR 3DEP Digital Elevation Model indicates a depressional wetland with no discrete features that could provide a continuous surface connection. The closest jurisdictional water, Stream B-1, is located approximately 1,900 feet east of Wetland B-1. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.
  - Wetland B-2 (0.19 acre) is located within the 1018' elevation with the surrounding elevation ranging 2 – 26 feet higher around this wetland based on the MNDNR 2-foot contour maps. The LiDAR 3DEP Digital Elevation Model indicates a depressional wetland with no discrete features that could provide a continuous surface connection. The closest jurisdictional water, Stream B-1, is located approximately 1,500 feet east of Wetland B-2. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK Benton Substation

- Wetland B-4 (0.16 acre) is located within the 1036' elevation with the immediately surrounding elevation 4 feet higher around this wetland based on the MNDNR 2-foot contour maps. The LiDAR 3DEP Digital Elevation Model indicates a depressional wetland with no discrete features that could provide a continuous surface connection. The closest jurisdictional water, Stream B-4, is located approximately 1,300 feet east of Wetland B-4. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.
- Wetland B-5 (0.12 acre) is located within the 1020' elevation with the surrounding elevation ranging 6 – 20 feet higher around this wetland based on the MNDNR 2-foot contour maps. The wetland is a small depressional area within the footprint of a larger area that was subject to mining in the past. Topography in this area displays a gentle increase to moderate increase in slope southwest to northeast for approximately 1,000 linear feet toward Stream B-1, the nearest relatively permanent water. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.

Based on this evaluation, Wetlands B-1, B-2, B-4 and B-5 are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

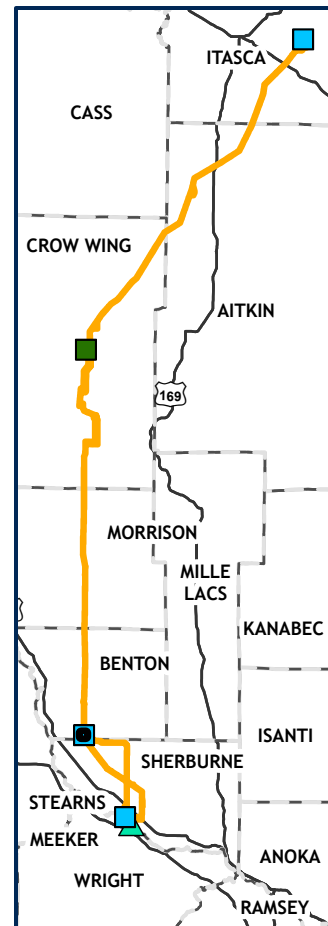
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Benton County Substation Siting Area Wetland Delineation Report
  - b. Figure: Wetland Delineations Benton Siting Area Benton County, Minnesota Map 6 of 6.
  - c. Minnesota Regulatory Viewer: US Geological Service 3DEP Hillshade and Digital Elevation Model (DEM) layers, MNDNR 2-foot contour layer

10. OTHER SUPPORTING INFORMATION. N/A

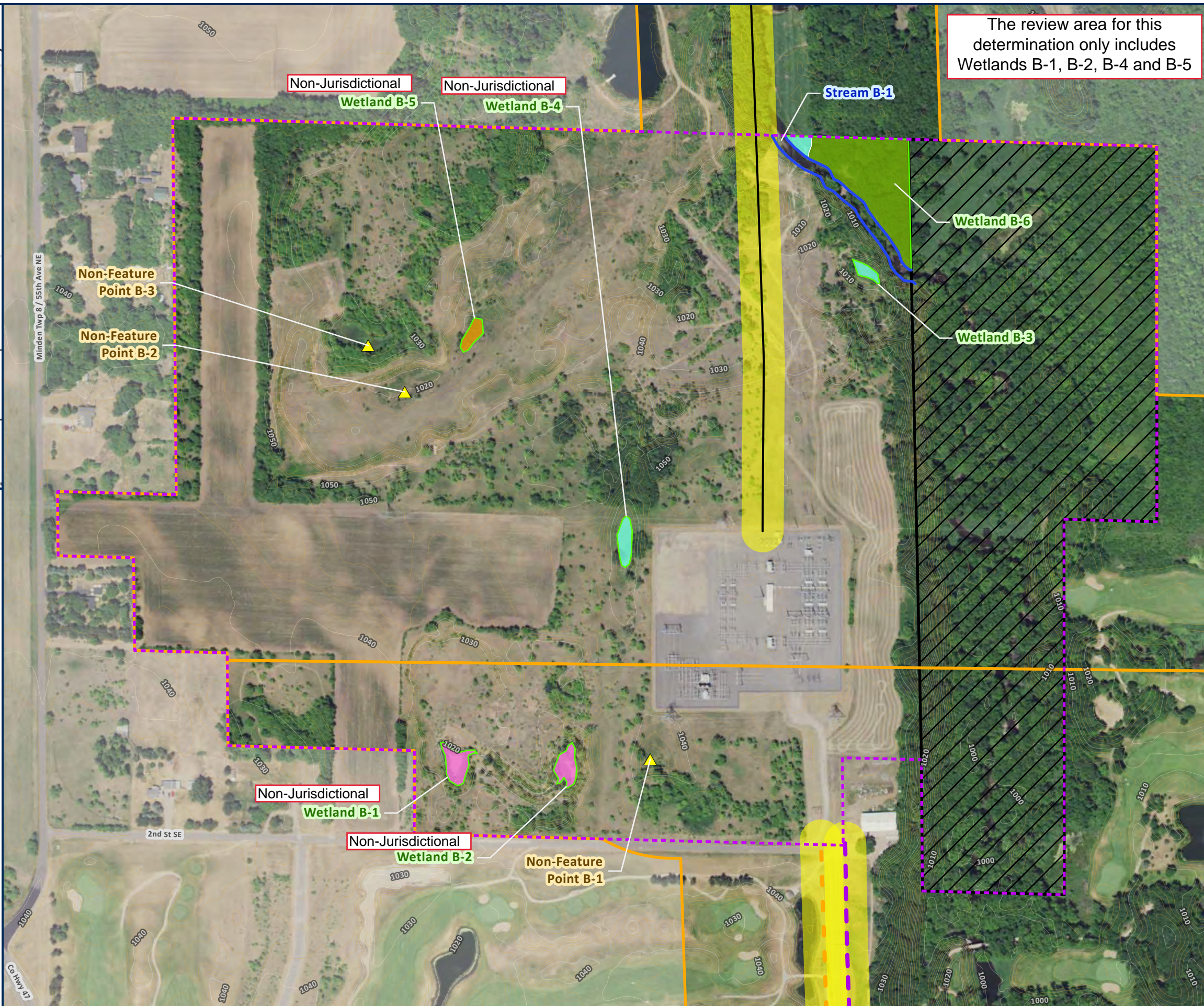
MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK Benton Substation

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



# Northland Reliability Project



The review area for this determination only includes Wetlands B-1, B-2, B-4 and B-5

## Wetland Delineations Benton Siting Area Benton County, Minnesota

Map 5 of 6

### Survey Results – Delineated Features

- PROPOSED CENTERLINE
- - - REPLACE GRE-BS LINE
- - - REPLACE MR LINE
- ▭ PROPOSED ROUTE
- ▭ PROPOSED RIGHT OF WAY
- - - SUBSTATING AREA
- ▨ AREA NOT SURVEYED
- ▲ NON-HYDRO FEATURE POINT
- LINEAR WATERBODY
- ▭ WETLAND BOUNDARY
- ▭ PEM WETLAND COMMUNITY
- ▭ PFO WETLAND COMMUNITY
- ▭ PSS WETLAND COMMUNITY
- ▭ PUB WETLAND COMMUNITY





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ST. PAUL, MN 55101-1323

MVP-2023-00919-SRK (Cuyuna Substation)

7 June 2024

**MEMORANDUM FOR RECORD**

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),<sup>1</sup> MVP-2023-00919-SRK Cuyuna Substation

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>2</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>3</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK Cuyuna Substation

## 1. SUMMARY OF CONCLUSIONS.

a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

- i. Wetland C-1, non-jurisdictional
- ii. Wetland C-2, non-jurisdictional
- iii. Wetland C-3, non-jurisdictional
- iv. Wetland C-4, non-jurisdictional
- v. Wetland C-5, non-jurisdictional
- vi. Wetland C-6, non-jurisdictional
- vii. Wetland C-7, non-jurisdictional
- viii. Wetland C-8, non-jurisdictional
- ix. Wetland C-9, non-jurisdictional
- x. Wetland C-10, non-jurisdictional
- xi. Wetland C-11, non-jurisdictional
- xii. Wetland C-13, non-jurisdictional
- xiii. Wetland C-14, non-jurisdictional
- xiv. Wetland C-15, non-jurisdictional
- xv. Wetland C-16, non-jurisdictional

MVP

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## 2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
  - b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
  - c. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)
3. REVIEW AREA. The review area is for this determination includes the 15 non-jurisdictional wetlands identified in Section 1(a) of this MFR and on the attached figure labeled 2023-00919-SRK Cuyuna AJD. The review area is located at 46.4867 N, -94.0477 W in Wolford Township, Crow Wing County, Minnesota. There are no other JDs associated with the Cuyuna Substation review area.
  4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
  5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
  6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</sup> N/A

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<sup>5</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>6</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK Cuyuna Substation

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A

b. The Territorial Seas (a)(1)(ii): N/A

c. Interstate Waters (a)(1)(iii): N/A

d. Impoundments (a)(2): N/A

e. Tributaries (a)(3): N/A

f. Adjacent Wetlands (a)(4): N/A

g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>7</sup>

N/A

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK Cuyuna Substation

- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).
- Wetland C-1 (0.16 acre), Wetland C-2 (0.21 acre), Wetland C-3 (0.16 acre), Wetland C-6 (0.05 acre), Wetland C-7 (0.04 acre), Wetland C-9 (0.11 acre), Wetland C-10 (0.07 acre), Wetland C-14 (0.04 acre), Wetland C-15 (0.09 acre) and Wetland C-16 (0.03 acre) are depressional basins with no discrete features that could provide a continuous surface connection. According to MNDNR hillshade mapping and LiDAR 3DEP Digital Elevation Model and hillshade mapping these wetlands sit lower in elevation than the surrounding uplands with no discrete features evident to support connectivity to surrounding aquatic resources. There are no ditches, swales, pipes, culverts, or other topographical features that connect these wetlands to downstream jurisdictional waters.
  - Wetland C-4 (0.07 acre) continues off-site to the north. However, the wetland would be confined to a small depressional basin based on the contour lines included on the attached figure 2023-00919-SRK Cuyuna AJD. The elevation off-site to the north continues to rise before a logging road. The nearest jurisdictional water is an off-site wetland located approximately 500 feet north of Wetland C-4. However, based on our review of MNDNR hillshade mapping and LiDAR 3DEP Digital Elevation Model and hillshade mapping, Wetland C-4 is separated from the off-site wetland by an upland ridge and earthen roadway. Additionally, there are no discrete features evident to support connectivity to surrounding aquatic resources. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.
  - Wetland C-5 (0.80 acre) and Wetland C-8 (0.55 acre) are located within the 1210' elevation based on the contour lines included on the attached figure 2023-00919-SRK Cuyuna AJD. Surrounding elevations increase in excess of 10 feet with no discrete feature evident to support connectivity to surrounding aquatic resources. An off-site wetland located to the north of these wetlands (Wetland C-5: 800 feet and Wetland C-8: 3,000 feet) is the closest jurisdictional water. Additionally, MNDNR hillshade mapping and LiDAR 3DEP Digital Elevation Model and hillshade mapping indicates these wetlands are fully enclosed depressional basins with no discrete features that could provide a continuous surface connection. There are no

MVP

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ditches, swales, pipes, culverts, or other topographical features that connect these wetlands to downstream jurisdictional waters.

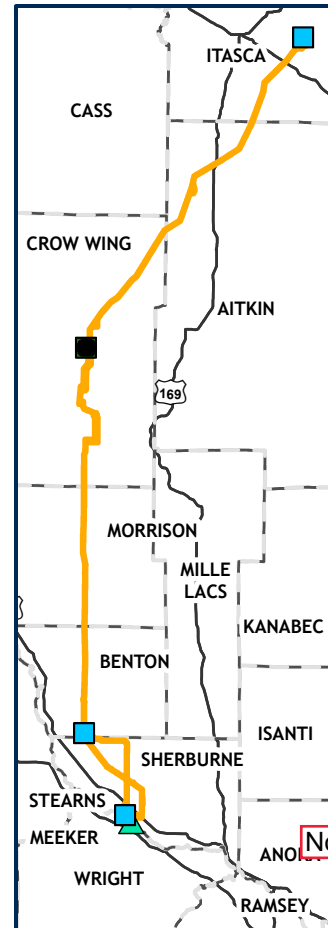
- Wetland C-11 (0.23 acre) and Wetland C-13 (0.56 acre) are located within the 1200' elevation based on the contour lines included on the attached figure 2023-00919-SRK Cuyuna AJD. Surrounding elevations increase in excess of 10 feet with no discrete feature evident to support connectivity to surrounding aquatic resources. Wetland C-12 would be the closest jurisdictional water approximately 650 feet to the east of both wetlands. Additionally, MNDNR hillshade mapping and LiDAR 3DEP Digital Elevation Model and hillshade mapping indicates these wetlands are fully enclosed depressional basins with no discrete features that could provide a continuous surface connection. There are no ditches, swales, pipes, culverts, or other topographical features that connect these wetlands to downstream jurisdictional waters.

Based on this evaluation, Wetlands C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, C-13, C-14, C-15, and C-16 are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

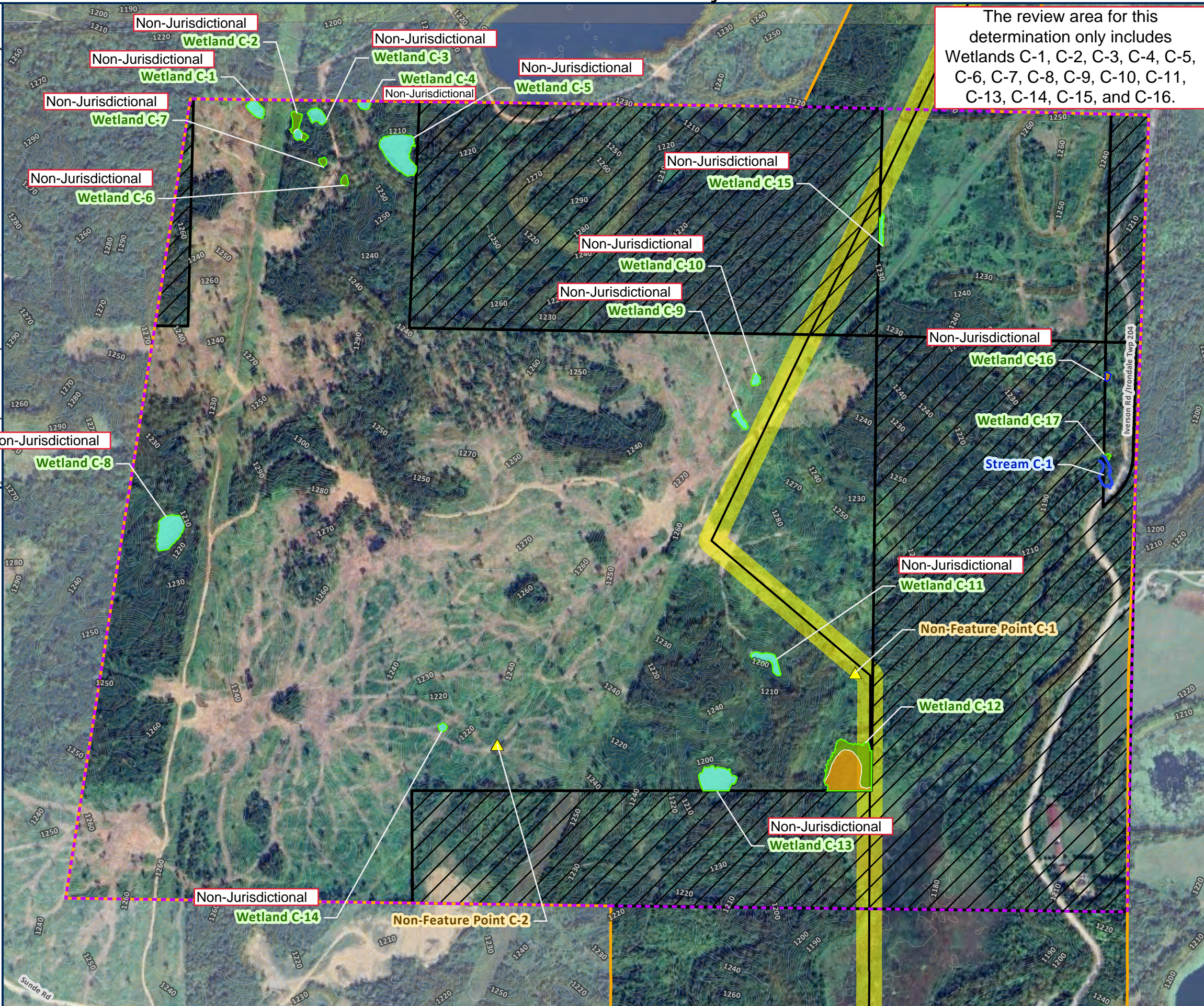
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Cuyuna Series Compensation Station Siting Area Wetland Delineation Report
  - b. Minnesota Regulatory Viewer: US Geological Service 3DEP Hillshade and Digital Elevation Model (DEM) layers, MNDNR 2-foot contour layer

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



# Northland Reliability Project



## Wetland Delineations Cuyuna Series Compensation Station Siting Area Crow Wing County, Minnesota

Map 5 of 6

### Survey Results – Delineated Features

- PROPOSED CENTERLINE
- PROPOSED ROUTE
- PROPOSED RIGHT OF WAY
- - - SURVEY AREA
- ▨ AREA NOT SURVEYED
- ▲ NON-FEATURE POINT
- LINEAR WATERBODY
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- PEM WETLAND COMMUNITY
- PFO WETLAND COMMUNITY
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MVP-2023-00919-SRK (Iron Range Substation)

7 June 2024

**MEMORANDUM FOR RECORD**

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BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>2</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>3</sup>

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<sup>4</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-00919-SRK (Iron Range Substation)

## 1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
  - i. Wetland IR-2, non-jurisdictional
  - ii. Wetland IR-3, non-jurisdictional
  - iii. Wetland IR-4, non-jurisdictional
  - iv. Wetland IR-5, non-jurisdictional
  - v. Wetland IR-6, non-jurisdictional
  - vi. Wetland IR-7, non-jurisdictional
  - vii. Wetland IR-12, non-jurisdictional
  - viii. Stream IR-2, non-jurisdictional
  - ix. Open Waterbody IR-1, non-jurisdictional

## 2. REFERENCES.

- a. “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”)
- b. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area for this determination includes the 8 non-jurisdictional wetlands, 1 non-jurisdictional ditch, and 1 non-jurisdictional open water identified in Section 1(a) of this MFR and on the attached figure labeled 2023-00919-SRK Iron Range AJD. The review area is located at 47.2309 N, -93.3056 W in Trout Lake Township, Itasca County, Minnesota. There are no other JDs associated with the Iron Range Substation review area.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
  - b. The Territorial Seas (a)(1)(ii): N/A
  - c. Interstate Waters (a)(1)(iii): N/A
  - d. Impoundments (a)(2): N/A

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<sup>5</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>6</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>7</sup>
  - Open Waterbody IR-1 (0.50 acre) and Wetland IR-11 (0.30 acre) within the review area are part of the same stormwater feature constructed in upland to collect and retain water as settling basins associated with the construction of the existing substation. A November 30, 2016, Preliminary Jurisdictional Determination (PJD) (2011-05407-WAB) displayed the location of the stormwater features as upland. Therefore, these features have been determined to be Paragraph (b)(5) excluded artificial lakes and ponds and not subject to Section 404 of the Clean Water Act (CWA).
  - Stream IR-2 (925 linear feet) is a linear ditch that is part of the stormwater feature detailed above, this resource was constructed in upland and drains only upland. Similar to the resources identified above, the November 30, 2016, PJD also displayed the area of this linear ditch as upland. Therefore, Stream IR-2 is a drainage ditch constructed in upland, draining only upland, and not carrying relatively permanent flow and therefore has been determined to be Paragraph (b)(3) excluded ditch and not subject to Section 404 of the CWA.
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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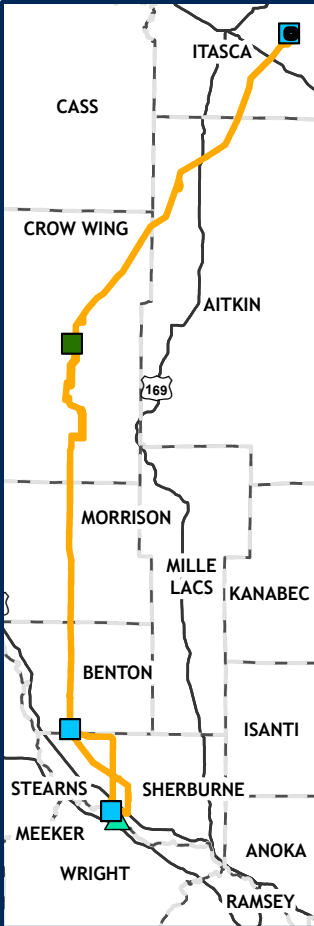
- Wetland IR-3 (0.64 acre), Wetland IR-4 (0.17 acre), and Wetland IR-5 (0.60 acre) are located adjacent to the south side of CR 434 within the existing roadway right-of-way. The MNDNR 2016 Hillshade shows the wetlands abutting a roadside ditch/swale running east to west. According to the MNDNR 2-foot contours the topography in this area would grade east (1394' contour) to west (1370' contour) where the discrete feature no longer exists and transitions to overland sheetflow of hydrology at this point for a distance of approximately 700 feet to non-jurisdictional Stream IR-2. Therefore, there are no discrete features that could provide a continuous surface connection. There are no ditches, swales, pipes, culverts, or other topographical features that connect these wetlands to downstream jurisdictional waters.
- Wetland IR-2 (0.08 acre) is a small depressional wetland within an existing transmission line right-of-way. This feature is depressional wetland. In order to comply with State of Minnesota regulations, the applicant requested a boundary and type evaluation from the Technical Evaluation Panel (TEP) under the Minnesota Wetland Conservation Act. On December 28, 2023, the TEP issued a Notice of Decision concurring with the delineated wetland boundaries. Based on aerial imagery and topography there are no discrete features that could provide a continuous surface connection. Wetland IR-2 is located approximately 1,200 feet to the east of the nearest jurisdictional water (Wetland IR-8). There are no ditches, swales, pipes, culverts, or other topographical features that connects this wetland to downstream jurisdictional waters.
- Wetland IR-6 (0.05 acre), Wetland IR-7 (0.60 acre), and Wetland IR-12 (0.40 acre) are depressional basins with no discrete features that could provide a continuous surface connection. According to MNDNR hillshade mapping and LiDAR 3DEP Digital Elevation Model and hillshade mapping these wetlands sit lower in elevation than the surrounding uplands with no discrete features evident to support connectivity to surrounding aquatic resources. Wetland IR-12 is located approximately 672 feet north of the nearest jurisdictional water (Wetland IR-8) and is separated by the existing substation. Wetland IR-7 is located approximately 700 feet northeast of the nearest jurisdictional water (Wetland IR-8) and Wetland IR-6 is located approximately 600 feet north of the nearest jurisdictional water (off-site). There are no ditches, swales, pipes, culverts, or other topographical features that connect these wetlands to downstream jurisdictional waters.

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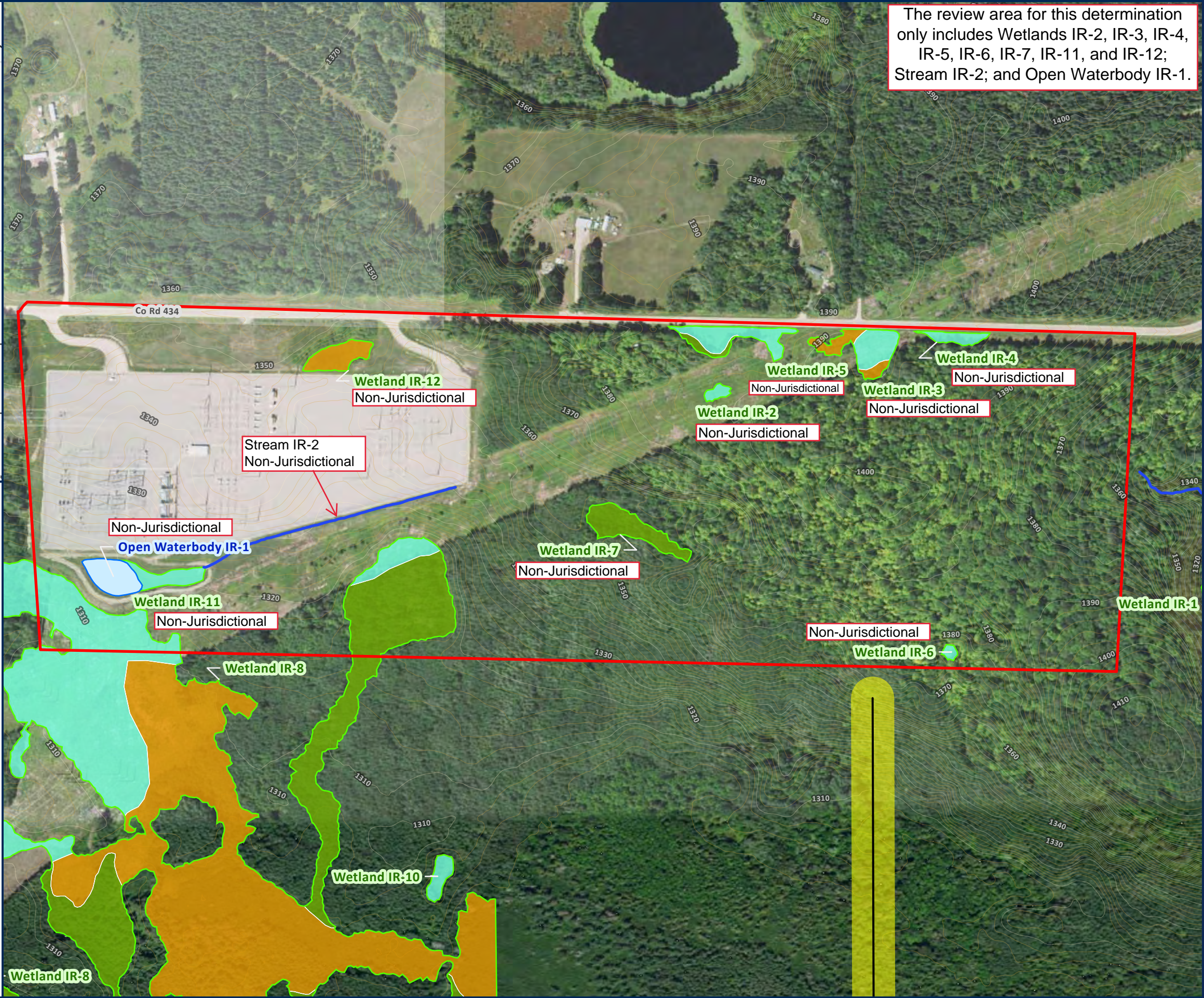
Based on this evaluation, Wetlands IR-2, IR-3, IR-4, IR-5, IR-6, IR-7, and IR-12 are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Iron Range Substation Siting Area Wetland Delineation Report.
  - b. Minnesota Regulatory Viewer: US Geological Service 3DEP Hillshade and Digital Elevation Model (DEM) layers, MNDNR Hillshade and 2-foot contour layers.
10. OTHER SUPPORTING INFORMATION. N/A
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



**Northland Reliability Project**





The review area for this determination only includes Wetlands IR-2, IR-3, IR-4, IR-5, IR-6, IR-7, IR-11, and IR-12; Stream IR-2; and Open Waterbody IR-1.

**Wetland Delineations**  
**Iron Range Substation Siting Area**  
**Itasca County, Minnesota**

**Map 1 of 1**

**Updated Project Area**

- PROPOSED CENTERLINE
- PROPOSED RIGHT OF WAY
- LINEAR WATERBODY
- OPEN WATERBODY
- WETLAND BOUNDARY
- PEM WETLAND COMMUNITY
- PFO WETLAND COMMUNITY
- PSS WETLAND COMMUNITY

